Richard T. Ellis
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August 12, 2002

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th H Street, SW, Portals
Washington, DC 20554

Re: *Joint Application by Verizon for Authorization To Provide In-Region, InterLATA Services in States of Delaware and New Hampshire*, Docket No. 02-157

Dear Ms. Dortch:

At the request of Staff, Verizon is submitting Verizon's and the Delaware PSC's Answers to AT&T's Complaint for Declaratory and Injunctive Relief filed with the federal district court in Delaware, C.A. No. 02-580.

Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 02-1497.

Sincerely,

Richard Ellis

cc: H. Thaggert
V. Schlesinger
G. Remondino
T. Wilson

STATE OF DELAWARE
PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

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July 23, 2002

Peter T. Dalleo
Clerk
United States District Court
for the District of Delaware
Boggs Federal Courthouse
Lockbox 18
844 King Street
Wilmington, DE 19801-3570

RE: *AT&T Communications of Delaware, Inc. v. Verizon Delaware Inc. et al.*, Case No. 02-580 (SLR)
Answer of the State Defendants

Dear Clerk:

Enclosed for filing are the original and one copy of the Answer submitted by the State Defendants named in the above action. A certificate of service is attached to each document.

Also enclosed is an extra initial page of the Answer. Please "time stamp" it and return it to me in the enclosed envelope.

Sincerely yours,

Gary A. Myers
Deputy Attorney General
Counsel for State Defendants

cc: William E. Manning, Jr., Esq.
Wendie C. Stabler, Esq.
(with copies of Answer)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

AT&T COMMUNICATIONS OF DELAWARE, INC.,	)	
Plaintiff,	)	
v.	)	Case No. 02-580 (SLR)
VERIZON DELAWARE INC., *et al.*,	)	
Defendants.	)	

ANSWER OF PUBLIC SERVICE COMMISSION OF DELAWARE AND ITS COMMISSIONERS

This is the ANSWER of the PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE and its Commissioners: ARNETTA McRAE, JOSHUA M. TWILLEY, DONALD J. PUGLISI, JOANN T. CONAWAY, and JAYMES B. LESTER. For purposes of this document, the Commission and its Commissioners (sued in their official capacities) shall be referred to as the "State Defendants."

¶¶ 1-4. The statements in these paragraphs are argumentative, reading more like a party's brief than the "short and plain statement" of the claim as required by F.R. Civ. P. 8(a)(2). The State Defendants should not be required to bear the unjustified burden to select, and separate, the relevant facts from the mass of argumentative verbiage. See, e.g., Salahuddin v. Cuomo, 861 F.2d 40, 41 (2nd Cir. 1988); Morgens Waterfall Holdings, L.L.C. v. Donaldson, Lufkin & Jenrette Securities Corp., 198 F.R.D. 608, 609 (S.D. N.Y. 2001); Hardin v. American Electric Power, 188 F.R.D. 509, 512 (S.D. Ind. 1999). Therefore, the State Defendants are forced to generally deny all the allegations in the paragraphs. In

addition, the extraneous and argumentative allegations in these paragraphs must be ignored. Davis v. Ruby Foods, Inc., 269 F.3d 818, 820-21 (7th Cir. 2001); Bennett v. Schmidt, 153 F.3d 516, 517 (7th Cir. 1998).

¶ 5. Admitted that the allegations in the complaint profess to assert a claim under the provisions of 47 U.S.C. §§ 251 and 252. Admitted that the Court has jurisdiction pursuant to 28 U.S.C. § 1331 over a cause of action arising under federal law. Denied that the provisions of 47 U.S.C. § 252(c)(6) create a cause of action against the Public Service Commission and the State of Delaware in that the provisions fail to define a cause of action against state utility commissions and their members in language sufficiently clear and explicit to overcome the presumptive bar of a State's sovereign immunity. See Verizon Maryland Inc. v. Public Service Commission of Maryland, 122 S.Ct. 1753, 1761 (2002) ("and it does not even say whom the suit is to be brought against - the state commission, the individual commissioners, or the carriers beneffitting from the state commission's order."); Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 787 (2000); Blatchford v. Native Village of Noatak, 501 U.S. 775, 786 (1991). But see MCI Telecommunication Corp. v. Bell Atlantic-Pennsylvania, 271 F.3d 491, 512 (3rd Cir. 2001), pet. for cert. pending sub nom. Pennsylvania Public Utility Commission v. MCI Telecommunications Corp., No. 01-1477 (U.S. filed April 4, 2002).

¶ 6. Admitted as to venue, but denied as such allegation suggests that the provisions of 47 U.S.C. § 252(c)(6) create a cause of action against State Defendants.

¶ 7. Admitted as to the corporate status of Plaintiff. State Defendants are without knowledge or information whether Plaintiff is a "requesting telecommunications carrier" for purposes of the matters asserted in this complaint.

¶ 8. Admitted.

¶ 9. Admitted.

¶ 10. Admitted.

¶¶ 11-16. The allegations in these paragraphs are argumentative, and in the form of a brief, and, hence, do not comply with the pleading directives of F.R. Civ. P. 8(a). State Defendants should not be compelled to respond to such arguments in an Answer. State Defendants concede that in 47 U.S.C. § 251(b) and (c), Congress imposed obligations on carriers, and incumbent local exchange carriers, respectively. The State Defendants also admit that Congress set pricing standards in 47 U.S.C. § 252 and the Federal Communications Commission has crafted a "TELRIC" methodology to be used generally by state utility commissions for setting the prices for the leasing of unbundled network elements.

¶¶ 17-38. The statements in these paragraphs are argumentative, reading more like a brief than the "short and plain statement" of the claim as required by F.R. Civ. P. 8(a)(2). The State Defendants should not be required to bear the unjustified burden to select, and separate, the relevant facts from the mass of argumentative verbiage. See, e.g., Salahuddin v. Cuomo, 861 F.2d 40, 41 (2nd Cir. 1988); Morgens Waterfall Holdings, L.L.C. v. Donaldson, Lufkin & Jenrette Securities Corp., 198 F.R.D. 608, 609 (S.D. N.Y. 2001); Hardin v. American Electric Power, 188 F.R.D. 509, 512 (S.D. Ind. 1999). Therefore, the State Defendants are forced to generally deny all the allegations in the paragraphs. In addition, the extraneous and argumentative allegations must be ignored. Davis v. Ruby Foods, Inc., 269 F.3d 818, 820-21 (7th Cir. 2001). The State Defendants admit that in 2001 Verizon Delaware Inc. filed an application requesting the Public Service Commission: (a) to set rates for specific unbundled network elements not included in its earlier 1997 rate filing and (b) to determine new charges to be substituted for the charges struck down by this

Court in Bell Atlantic-Delaware v. McMahon, 80 F. Supp. 2d. 218 (D. Del. 2000). The State Defendants also admit that, after conducting hearings on such application, the Public Service Commission entered PSC Order No. 5967 (June 4, 2002), resolving the application filed by Verizon Delaware Inc.

¶ 39. Denied.

¶ 40. The State Defendants assert that, unless adopted by the Pulbic Service Commission (either explicitly or implicitly), the non-binding recommendations of the Public Service Commission's Hearing Examiner and the arguments of its Public Service Commission's Staff are not relevant and are hence extraneous to this matter. No response is necessary to the recitals setting forth the recommendations and arguments not adopted by the Public Service Commission.

¶ 41. Denied.

¶ 42. Denied.

¶ 43. Denied.

¶ 44. The State Defendants respond in the same manner as their original responses to the incorporated paragraphs.

¶ 45. Denied.

¶ 46. Denied.

¶ 47. Denied.

¶ 48. The State Defendants are without information and belief about whether Plaintifff is aggrieved. In the complaint, the Plaintiff has not made any allegation that it now is subject, or will be subject, to the rates set in PSC Order No. 5967 (June 4, 2002).

FIRST DEFENSE

The complaint fails to state a claim for relief against the State Defendants because

the provisions of 47 U.S.C. § 252(e)(6) do not, in unmistakenly clear language set forth in the statutory provision, create a cause of action against the State Defendants. In light of the State of Delaware's sovereign immunity, such explicit expression by Congress is necessary.

SECOND DEFENSE

The action against the State Defendants is barred by the sovereign immunity granted to the State of Delaware and its agencies and commissions by Article III of the United States Constitution.

THIRD DEFENSE

The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, the State Defendants pray:

(1) That the Court:

(a) dismiss this action with prejudice;

(b) deny the claim of relief; or

(c) enter judgment in favor of the State Defendants.

(2) That the Court grant the State Defendants such other and further relief as the Court deems just and proper.

Respectfully submitted,

Gary A. Myers
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Deputy Attorney General
Delaware Department of Justice
Public Service Commission
861 Silver Lake Boulevard
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Date: July 22, 2002

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AT&T COMMUNICATIONS OF DELAWARE, INC.,	)	
Plaintiff,	)	
v.	)	Case No. 02-580 (SLR)
VERIZON DELAWARE INC., *et al.*,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, Gary A. Myers, a member of the Bar of this Court and the attorney for the State Defendants in this action, certify that I did cause two copies of the attached ANSWER to be served upon the following persons, by means of first-class United States mail, mailed on July 23, 2002 from Dover, DE.

William E. Manning, Esq.
Klett, Rooney, Lieber, & Schloring
1000 West Street, Suite 1410
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Attorney for Verizon Delaware Inc.

Wendie C. Stabler, Esq.
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P.O. Box 1266
Wilmington, DE 19899
Attorney for AT&T Communications of Delaware, Inc.

So certified this 23rd day of July, 2002.

Gary A. Myers
Del. Bar No. 369
Deputy Attorney General
Delaware Department of Justice
Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

AT&T COMMUNICATIONS OF DELAWARE, INC.,	:	
Plaintiff,	:	
	:	**C.A. No. 02-580**
v.	:	
VERIZON DELAWARE INC.; the PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE; and ARNETTA McRAE, Chair, JOSHUA M. TWILLEY, Vice Chair, DONALD J. PUGLISI, Commissioner, JAYMES B. LESTER, Commissioner, and JOANN T. CONAWAY, Commissioner, in their official capacities as Commissioners of the Public Service Commission of the State of Delaware, and not as individuals,	:	
Defendants.	:	

ANSWER OF VERIZON DELAWARE INC.

Defendant Verizon Delaware Inc. ("Verizon DE") answers the Complaint of Plaintiff AT&T Communications of Delaware, Inc. ("AT&T") as follows:

NATURE OF THE ACTION

1. The allegations of paragraph 1 contain legal conclusions and therefore require no response. To the extent a response is required, Verizon DE[1] denies the allegations contained in paragraph 1. This Court's opinion in *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F. Supp. 2d 218 (D. Del. 2000), the provisions of the

[1] With respect to the claims in footnote 1 of the Complaint, AT&T has incorrectly included a comma in Verizon DE's corporate name; the correct name is reflected in this Answer. Also, Verizon DE is not the "successor" to Bell Atlantic-Delaware, Inc.; rather, it is the same corporate entity. Bell Atlantic-Delaware, Inc. simply changed its name pursuant to the merger of its parent, Bell Atlantic Corporation, with GTE Corporation.

Telecommunications Act of 1996 (the "Act") and the Federal Communications Commission's ("FCC") implementing Total Element Long Run Incremental Cost ("TELRIC") regulations speak for themselves. Verizon DE denies that the June 4, 2002 decision of the Delaware Public Service Commission ("PSC") establishing Verizon DE's non-recurring charges ("NRCs") under the Act violates this Court's opinion, the Act or the FCC's regulations. To the contrary, the PSC expressly found that the NRCs it approved "comply with the FCC's TELRIC methodology in that they reasonably reflect the cost of performing these non-recurring tasks using the 'most efficient telecommunications technology currently available and the lowest cost network configuration,' and *not simply the cost to Verizon-DE of performing these tasks now or in the future*."[2]

2. Verizon DE admits that it submitted proposed NRC rates to the PSC, and that the PSC did not adopt the rates proposed by Verizon DE, but rather reduced those rates substantially by making modifications to the inputs of Verizon DE's model that the PSC found were necessary to produce TELRIC-compliant rates. Verizon DE denies the characterization that Verizon DE's proposed NRCs constituted a "step backwards." Rather, Verizon DE's proposed NRCs for many key processes were lower than the rates that were at issue in *McMahon*. The remaining allegations of paragraph 2 contain legal conclusions and therefore require no response. To the extent a response is required, Verizon DE denies these allegations. Verizon DE and other parties submitted extensive evidence regarding, and specifically briefed, the requirements of this Court's *McMahon* decision. The PSC specifically found that the NRCs it adopted complied with this

[2] *In the Matter of the Application of Verizon Delaware Inc. (f/k/a Bell Atlantic-Delaware, Inc.) for Approval of its Statement of Terms and Conditions under Section 252(f) of the Telecommunications Act of 1996*, PSC Docket 96-324, Phase II (Order No. 5967 Entered June 4, 2002) ("Order No. 5967") at 35, paragraph 91.

Court's order, made the findings this Court required, and noted specifically that the NRC rates "reasonably reflect[ed] the cost of performing those non-recurring tasks using the 'most efficient telecommunications technology currently available and the lowest cost network configuration.'"[3]

3. The allegations of paragraph 3 contain legal conclusions and therefore require no response. The cited United States Supreme Court opinions and provisions of the Act speak for themselves.

4. Verizon DE denies all of the allegations of this paragraph. Verizon DE specifically denies AT&T's contentions that Verizon DE has a local exchange "monopoly," that Verizon DE has ignored its statutory obligations, and that the PSC has failed to enforce the applicable requirements. Verizon DE further denies that its non-recurring rates operate as a barrier to entry, are costs that Verizon DE itself does not incur, or are excessive or in fact any higher than the law mandates to compensate Verizon DE for its forward-looking costs of allowing competitors to use its network. Contrary to AT&T's claims, Delaware's local telephone market is open to competition. Indeed, the PSC recently recommended that the FCC grant Verizon DE permission to provide long distance service, finding that competitors "are serving both residential and business customers at greater than *de miminis* levels, and in fact, at levels that might be equal to or greater than that existing in other states where [incumbents] have already received Section 271 approval from the FCC." [4] All remaining allegations not specifically denied are legal conclusions or arguments as to which no response is required.

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[3] Order No. 5967 at 35, paragraph 91.

[4] *Application by Verizon New England Inc., Verizon Delaware Inc., et al., for Authorization to Provide In-Region InterLATA Services in New Hampshire and Delaware,* WC Dckt. No. 02-157, Consultative Report of the Public Service Commission of Delaware to the FCC, July 16, 2002 at p. 5-6.

JURISDICTION AND VENUE

5. The allegations of paragraph 5 contain legal conclusions and therefore require no response.

6. Verizon DE admits that it resides in this district and that the PSC conducted its proceedings in this district. The remainder of paragraph 6 consists of legal conclusions not requiring a response.

PARTIES

7. Verizon DE lacks knowledge or information sufficient to admit or deny the factual allegations of paragraph 7. To the extent this paragraph contains legal conclusions regarding the characterization of AT&T under the Act, no response is necessary.

8. Verizon DE admits the factual allegations of paragraph 8. To the extent this paragraph contains legal conclusions regarding the characterization of Verizon DE under the Act, no response is necessary.

9. Verizon DE admits the factual allegations of paragraph 9. To the extent this paragraph contains legal conclusions regarding the characterization of the PSC under the Act, no response is necessary.

10. Verizon DE admits the factual allegations of paragraph 10.

BACKGROUND

11. Verizon DE admits that it is an incumbent provider of local telephone service in Delaware and that it had an exclusive state franchise to provide local telephone service in certain designated areas in Delaware.

12. The allegations of paragraph 12 contain legal conclusions and therefore require no response. To the extent a response is required, AT&T's recitation of the

purposes of the Act is misleading and incomplete and Verizon DE accordingly denies the allegations in this paragraph.

13. The allegations of paragraph 13 contain legal conclusions and therefore require no response.

14. Verizon DE denies the factual allegations contained in paragraph 14. In particular, given, for example, the availability of resale and facilities-based competition under the Act, competitive entry would be possible even if unbundled network element rates exceeded TELRIC levels, though the PSC has in fact complied with TELRIC in setting the NRC rates at issue here. Moreover, setting rates ***below*** TELRIC levels, as AT&T advocates, would discourage competing carriers from investing in their own facilities, which is the ultimate goal of the Act. The remaining allegations of paragraph 14 contain legal conclusions and therefore require no response.

15. Verizon DE admits that prices for unbundled network elements are often set forth in interconnection agreements between the ILEC and the new entrant. The remaining allegations of paragraph 15 contain legal conclusions and therefore require no response. Verizon DE notes that the Act's implementation scheme requires not only incumbents, but also potential entrants, to negotiate in good faith to develop interconnection agreements specifying the terms and conditions upon which the new entrant may interconnect with the incumbent's facilities.

16. The allegations of paragraph 16 contain legal conclusions and therefore require no response. To the extent a response is required, the cited United States Supreme Court opinions speak for themselves.

The Determination of Non-Recurring Cost Rates (On Remand)
Before the Public Service Commission of the State of Delaware

17. The cited PSC orders speak for themselves and, to the extent paragraph 17 characterizes PSC orders, those characterizations constitute legal conclusions that require no response. Verizon DE admits, however, that this case arises out of the PSC's review of Verizon DE's UNE prices under section 252 of the Act.

18. Verizon DE's complaint and AT&T's motions and counterclaims speak for themselves and require no response.

19. The allegations of paragraph 19 contain legal conclusions and therefore require no response. This Court's opinion in the *McMahon* case speaks for itself.

20. The allegations of paragraph 20 contain legal conclusions and therefore require no response. This Court's opinion in the *McMahon* case speaks for itself.

21. Verizon DE denies the factual allegations contained in paragraph 21. Verizon DE specifically denies that it "did not respond quickly to the Court's directive." Verizon DE timely filed its proposed NRC rates on April 26, 2001. During the period between this Court's opinion and the time Verizon DE filed new rates, Verizon DE gathered the detailed evidence that this Court directed the PSC to consider. The new proposed NRCs were based upon an entirely new model under which Verizon DE painstakingly examined every aspect of the tasks necessary to provide non-recurring services and the changes that would occur if one assumed the use of the most efficient technology currently available. Verizon DE's filings to the PSC speak for themselves and allegations characterizing those filings accordingly require no response.

22. Verizon DE admits the procedural allegations of paragraph 22. The cited PSC orders speak for themselves and allegations characterizing those orders accordingly require no response.

23. Verizon DE admits the allegations of paragraph 23 except that Verizon DE does not agree with the characterization of the schedule as "expedited."

24. Verizon DE admits that it presented several witnesses in support of its non-recurring cost model. Verizon DE's testimony and model in the PSC proceeding are in writing and speak for themselves and allegations characterizing those documents accordingly require no response. Nonetheless, Verizon DE admits that the model is designed to measure forward-looking costs, and its process for doing so starts with existing systems and information gathered from a survey of Verizon employees, and then makes forward-looking assumptions, including replacement or modification of existing systems where such changes would be efficient and are currently available (regardless of whether Verizon DE itself intends to make those changes to its processes).

25. The submissions of the PSC staff are in writing and speak for themselves and allegations characterizing those submissions accordingly require no response. Further, the PSC made its own final ruling in this case and was in no way bound to adopt the opinions of its Staff.

26. Verizon DE admits that AT&T advocated non-recurring charges that generally were below those proposed by Verizon DE and were based on entirely hypothetical processes producing unrealistic levels of efficiency that cannot be achieved under currently available technology; the AT&T model accordingly grossly understated non-recurring costs. The PSC rejected this model, as has every other state commission to consider it. The Hearing Examiner also rejected AT&T's NRC model, finding that "Verizon-DE points out legitimate concerns about the realism, from a technical and economic standpoint, reflected by its assumptions. In addition, AT&T did not present evidence showing that its model had been accepted elsewhere, which may have added

credibility to its results."[5] The testimony of AT&T is in writing and speaks for itself and allegations characterizing that testimony accordingly require no response, but Verizon DE specifically denies that AT&T's proposed costs were based on "processes that would be used by an efficient carrier."

27. Verizon DE admits that the Hearing Examiner issued findings and Recommendations on December 21, 2001 and recommended adoption of Verizon DE's NRC model, with certain adjustments. The Hearing Examiner's December 21, 2001 Report is in writing and speaks for itself and allegations characterizing that Report accordingly require no response. As noted above, the Hearing Examiner recognized "legitimate concerns about the realism" of AT&T's NRC model.[6]

28. Verizon DE admits the first and second sentences of paragraph 28. The cited PSC order is in writing and speaks for itself and allegations contained in the third sentence of paragraph 28 characterizing that order accordingly require no response.

29. Verizon DE denies the first, third, and fourth sentences of paragraph 29. Verizon DE notes that the PSC expressly found that the NRCs it approved "reasonably reflect the cost of performing these non-recurring tasks using the 'most efficient telecommunications technology currently available and the lowest cost network configuration,' and *not simply the cost to Verizon-DE of performing these tasks now or in the future*."[7] Verizon DE denies the fifth sentence of paragraph 29, except that Verizon DE admits that some – though by no means all – of the current non-recurring rates are higher than the ones adopted in 1997. The set of NRCs reviewed by this Court in *McMahon* was based on a record from 1996, when Verizon DE had little information

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5 Hearing Examiner's December 21, 2001 Report at paragraph 247.

6 Hearing Examiner's December 21, 2001 Report at paragraph 247.

7 Order No. 5967 at 35, paragraph 91 (emphasis added).

about how long it would actually take to provision these UNEs, or even how it would perform some of the tasks it was required to perform for the CLECs. Over the years, Verizon DE has gained much more experience and knowledge, and the current rates are based on actual evidence collected from workers performing the tasks in question, reduced to reflect forward-looking efficiencies and process improvements. In addition, the CLECs themselves have asked Verizon in some cases to modify the work steps and to add steps into the process to minimize customer disruption. Notably, the New Jersey, New York, and Massachusetts commissions recently looked at the same evidence and approved non-recurring rates generally higher than those the Delaware PSC had approved in 1997. With respect to the second sentence of paragraph 29, the parties' briefs and testimony are in writing and speak for themselves and allegations characterizing these briefs and testimony require no response.

30. Verizon DE denies the first four sentences of paragraph 30. Most of the task times used to develop Verizon DE's NRCs were determined based on the results of an employee survey which were then adjusted to reflect the most efficient forward-looking technologies and process improvements available. This survey was unrelated to the Andersen Consulting study mentioned in this paragraph. For one particular unit – the Telecom Industry Service Operating Center ("TISOC") – the cost group had discovered an existing time and observation study undertaken to assist the TISOC with staffing issues, and decided to use those results rather than conducting a survey for those tasks. It came to light after the close of the record in the PSC proceeding below that this TISOC study had been performed by Verizon, and that the results were reported to and validated by Andersen Consulting, but the cost group had mistakenly described the study as having been conducted by Andersen. Verizon DE also discovered that Andersen Consulting had

actually conducted a more recent study of the TISOC in the spring of 2000, again for staffing purposes, in which it observed shorter work times. Verizon DE offered to use this more recent data if the PSC directed it to rerun its rates (the record having closed on Verizon DE's original submission). In its final order, the PSC did direct Verizon DE to modify its rates using the more recent Andersen study with lower times for the TISOC. This change is reflected in the approved rates and resulted in lower NRCs.

Verizon DE further denies the fifth sentence of paragraph 30. Contrary to AT&T's suggestions, the forward-looking adjustments used to reduce current times to reflect the impact of using the most efficient technology currently available and the lowest cost network configuration are documented in the NRC model itself, which was provided to all parties to the PSC proceeding. The process by which the factors were developed was also explained in detail, and one of the subject matter experts who participated in developing the factors was made available as a witness. AT&T chose not to question him about the very process it now complains was not sufficiently explained.

31. The Hearing Examiner's February 28, 2002 Report is in writing and speaks for itself and allegations characterizing that Report accordingly require no response. Verizon DE notes that the PSC declined to adopt the portion of the February 28 Hearing Examiner's Report relating to NRCs. The PSC agreed with the Hearing Examiner's original conclusion – before he reversed himself – that Verizon DE's model could be used to set TELRIC-compliant rates. Moreover, the Hearing Examiner was never presented with the input changes ultimately ordered by the PSC and was never asked to opine whether those changes allowed the model to produce TELRIC-compliant rates. The PSC made that determination itself.

32. Verizon DE denies that its witnesses "effectively conceded that the Verizon NRCM did not calculate costs based on the most efficient technology currently available, but instead used a 'what Verizon-DE will actually achieve' outlook." To the contrary, their testimony and the record demonstrated that "[t]he forward-looking factors that the experts applied were . . . based on their expert judgments of what a most efficient carrier using the most efficient technology currently available will do -- *regardless of whether Verizon DE will in fact make these changes.*"[8] Verizon DE also denies the third sentence of paragraph 32. As explained above, Verizon DE's forward-looking adjustments were appropriately documented and explained and reasonable. With respect to the remaining allegations in paragraph 32, the Hearing Examiner's February 28, 2002 Report is in writing and speaks for itself and allegations characterizing that Report accordingly require no response.

33. The Hearing Examiner's February 28, 2002 Report is in writing and speaks for itself; allegations characterizing that Report accordingly require no response.

34. Verizon DE admits the fifth, sixth, and seventh sentences of paragraph 34 and admits that the PSC considered the Hearing Examiner's Remand findings at a meeting on March 5, 2002. With respect to the remaining allegations of paragraph 34, the transcript of the meeting and the cited PSC order are in writing and speak for themselves and allegations characterizing those documents accordingly require no response.

35. Verizon DE admits the first sentence of paragraph 35. With respect to the remaining allegations in paragraph 35, the official transcription of the PSC's public deliberations of April 30, 2002 is in writing and speaks for itself, and allegations

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[8] Verizon DE Reply Brief on Remand at 8 (emphasis in original).

characterizing that transcription accordingly require no response; Verizon DE denies AT&T's characterization of this meeting. Verizon DE further notes that the PSC's final order of June 4, 2002 is the official order of the PSC's actions in this docket and was expressly adopted by the Commission at a subsequent public meeting. It explains the PSC's reasoning in detail, is in writing, and speaks for itself; allegations characterizing that order accordingly require no response.

36. The PSC's order of June 4, 2002 is in writing and speaks for itself and accordingly no response is required. Verizon DE denies that "the PSC agreed with the criticisms leveled by Staff and AT&T, and the other parties that Verizon's NRCM was flawed." To the contrary, although the PSC noted that it would "not approve the rates as proposed by Verizon DE," it found that "certain alterations to the inputs and assumptions of the [Verizon DE non-recurring cost] model would allow the model to be used to produce TELRIC-compliant NRC rates."[9]

37. The PSC's order of June 4, 2002 is in writing and speaks for itself and accordingly no response is required. To the extent a response is necessary, Verizon DE denies the allegations in paragraph 37. The record provided ample basis for the PSC's rejection of AT&T's model, which also has been rejected by every other state commission to have decided the issue, and for its reliance on Verizon DE's NRCM.

38. Admitted.

AT&T's Claim that "The NRC Rates Set By The PSC Are Unlawful And Violate *McMahon*"

39. The allegations of paragraph 39 constitute conclusions of law to which no response is required. To the extent a response is required, the allegations of paragraph 39

[9] Order No. 5967 at 32, paragraphs 84-85.

are denied because the PSC's order complies with the Act, applicable regulations, and this Court's prior order.

40. The Hearing Examiner's February 28, 2002 Report and the PSC staff's memorandum are in writing and speak for themselves and accordingly no response is required. Verizon DE notes that the PSC expressly found that the NRCs it approved "comply with the FCC's TELRIC methodology in that they reasonably reflect the cost of performing these non-recurring tasks using the 'most efficient telecommunications technology currently available and the lowest cost network configuration,' and *not simply the cost to Verizon DE of performing these tasks now or in the future*."[10]

41. Denied. The NRCs approved by the PSC are based on the most efficient technology currently available and the lowest cost network configuration. There was ample evidence, therefore, to support the PSC's conclusion that the rates comply with TELRIC and the Act.

42. The allegations of paragraph 42 constitute conclusions of law to which no response is required. This Court's prior order in *McMahon*, the FCC's rules, and the Hearing Examiner's findings speak for themselves and allegations characterizing those documents accordingly require no response. To the extent a response is required, the allegations of paragraph 42 are denied because the PSC's order complies with the Act, applicable regulations, and this Court's prior order.

43. The allegations of paragraph 43 constitute conclusions of law to which no response is required. To the extent a response is required, the PSC's order is well-supported by the record and sufficiently explained, and the PSC had ample support in the record for rejecting AT&T's model.

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[10] Order No. 5967 at 35, paragraph 91 (emphasis added).

COUNT ONE

44. Verizon DE's responses to paragraphs 1 through 43 are incorporated as though fully set forth herein.

45. The allegations of paragraph 45 constitute conclusions of law to which no response is required. To the extent a response is required, the allegations of paragraph 45 are denied because the PSC's order is amply supported by the record and sufficiently explained.

46. The allegations of paragraph 46 constitute conclusions of law to which no response is required. To the extent a response is required, the allegations of paragraph 46 are denied because the PSC's order complies with the Act.

47. The allegations of paragraph 47 constitute conclusions of law to which no response is required. To the extent a response is required, the allegations of paragraph 47 are denied because the PSC's order complies with the FCC's TELRIC rules.

48. The allegations of paragraph 48 constitute conclusions of law to which no response is required. To the extent a response is required, Verizon DE denies that AT&T has been aggrieved and that AT&T is entitled to any relief.

FIRST AFFIRMATIVE DEFENSE

AT&T's complaint fails to state a claim upon which relief may be granted.

WHEREFORE, Verizon DE respectfully requests that AT&T's complaint be dismissed with prejudice and that this Court grant such other relief as it deems just and proper.

KLETT ROONEY LIEBER & SCHORLING

By: _____

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July 26, 2002

WLM: 35926

CERTIFICATE OF SERVICE

I, William E. Manning, do hereby certify that two true and correct copies of the foregoing **Answer of Verizon Delaware Inc.** were served this 26th day of July, 2002 as follows:

BY HAND

Wendie C. Stabler, Esquire
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BY FIRST CLASS MAIL, POSTAGE PREPAID

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